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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 7083/LA3/70. *Dated, Trivandrum, 23rd November* 1970.

The following Bill together with the Statement of Objects and Reasons and the Financial Memorandum is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. PRASANNAN,
Secretary,
Legislative Assembly.

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Fourth Kerala Legislative Assembly

Bill No. 20.

THE KERALA TORTS (MISCELLANEOUS PROVISIONS) BILL, 1970

A

BILL

to unify and amend the law relating to survival of causes of action, liability of joint tortfeasors and liability in cases of contributory negligence in respect of torts.

Preamble.—WHEREAS it is expedient to unify and amend the law relating to survival of causes of action, liability of joint tortfeasors and liability in cases of contributory negligence in respect of torts;

BE it enacted in the Twenty-first Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Kerala Torts (Miscellaneous Provisions) Act, 1970.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

PART II

EFFECT OF DEATH IN RELATION TO CERTAIN CAUSES OF ACTION IN TORTS

2. **Effect of death on certain causes of action.**—On the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this section shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

3. **Damages recoverable in such cases.**—Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

(a) shall not include any exemplary damages;

(b) in the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

4. **Action in cases where death occurs before or at the same time the damage is suffered.**—Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

5. **Rights conferred by this Act to be in addition to rights conferred by the Fatal Accidents Act.**—The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Indian Fatal Accidents Act, 1855 (Central Act 13 of 1855) and so much of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Act as it applies in relation to other causes of action not expressly excepted from the operation of section 2 of this Act.

Explanation.—In this section and in section 7 and 8 "dependants" means the wife, husband, parent and child within the meaning of the Indian Fatal Accidents Act, 1855.

6. **Damages provable in insolvency.**—In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this Act, any liability in respect of the cause of aciton in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

PART III

PROCEEDINGS AGAINST, AND CONTRIBUTION BETWEEN TORTFEASORS

7. Proceedings against, and contribution between joint and several tortfeasors.—(1) Where damage is suffered by any person as a result of a tort (whether a crime or not),—

(a) judgment obtained against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;

(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of his estate, or of the dependants of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise) the sum recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;

(c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section, the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

PART IV

APPORTIONMENT OF LIABILITY IN CASES OF CONTRIBUTORY NEGLIGENCE

8. Apportionment of liability in case of contributory negligence.—(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of

the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Provided that—

(a) this sub section shall not operate to defeat any defence arising under a contract;

(b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this sub section shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of sub section (1), subject to any reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Section 7 shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of sub section (1) in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under Part II of this Act, the damages recoverable would be reduced under sub section (1), and damages recoverable in an action brought for the benefit of the dependants of that persons under the Indian Fatal Accidents Act, 1855, shall be reduced to a proportionate extent.

(5) Where, in any case to which sub section (1) applies, one of the persons at fault avoids liability to any other such persons or his personal representative on the plea that the claim is barred by limitation, he shall not be entitled to recover any damages or contribution from that other person or representative by virtue of that sub section.

Explanation.—In this section, "fault" means negligence, breach of statutory duty or other act or omission which gives rise to a liability to tort or would, apart from this Act, give rise to the defence of contributory negligence; and "damage" includes loss of life and personal injury.

PART V

REPEAL

9. Repeal.—(1) The Travancore Law Reforms (Miscellaneous Provisions) Act, 1124 (Act XII of 1124), is hereby repealed.

(2) The Legal Representatives' Suits Act, 1855 (Central Act 12 of 1855), shall cease to apply to that part of the State of Kerala where it was in force immediately before the commencement of this Act.

(3) Section 306 of the Indian Succession Act, 1925 (Central Act 39 of 1925), so far as it relates to rights of action in torts, shall cease to apply to the State of Kerala.

STATEMENT OF OBJECTS AND REASONS

The law in regard to survival of causes of action in respect of tortious acts is not uniform throughout the State. The Travancore Law Reform (Miscellaneous Provisions) Act, 1124, modelled on certain English statutes, is in force in the Travancore area of the State. It is a useful piece of legislation regarding survival of causes of action in torts and some allied topics. According to Part I of this Act, on death, all causes of action except those for defamation or seduction or inducing one spouse to leave the other or to claims for damages on the ground of adultery will survive against or for the benefit of the estate. Besides the Travancore Law Reform (Miscellaneous Provisions) Act, 1124, section 306 of the Indian Succession Act and the Fatal Accidents Act, 1855, are also in force in the Travancore area of the State.

2. In the Cochin area, no Act corresponding to the Legal Representatives Suits Act, 1855, or the Travancore Law Reform (Miscellaneous Provisions) Act, 1124, is in force. The law applicable in this area is hence the rule of common law to the extent it is modified by the Fatal Accidents Act, 1855 and section 306 of the Indian Succession Act, 1925.

3. In the Malabar area, the position is the same as in the Cochin area with the modification, that in respect of wrongs committed which have occasioned pecuniary loss to the estate, the executor, administrator or other representative may sue and be sued. But, the suit by the person wronged will abate on the death of either party to the suit. This is because of the Legal Representatives' Suits Act, 1855, which is in force in that area.

4. The Supreme Court has pointed out that continuance of different laws over different regions of a State indefinitely may not be consistent with the principles underlying article 14 of the Constitution. As pointed out by the States Reorganisation Commission, lack of uniformity of law in different regions of a State "in so far as it involves discrimination without justification may even prove to be bad in law." The uniformity of law is proposed to be achieved by enacting a law for the whole State on the lines of Part I of the

Travancore Law Reform (Miscellaneous Provisions) Act repealing the Legal Representatives' Suits Act in its application to the Malabar area of the State. Section 306 of the Indian Succession Act in its application to the State of Kerala so far as it relates to the rights of action in torts and the Travancore Law Reform (Miscellaneous Provisions) Act.

5 The Bill is intended to achieve the above object.

FINANCIAL MEMORANDUM

The Bill if enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

C. ACHUTHA MENON.